

1 PHILLIP A. TALBERT
2 United States Attorney
3 ADRIAN T. KINSELLA
4 Assistant United States Attorney
5 501 I Street, Suite 10-100
6 Sacramento, CA 95814
Telephone: (916) 554-2700
Facsimile: (916) 554-2900
7
8 Attorneys for Plaintiff
9 United States of America

10
11 IN THE UNITED STATES DISTRICT COURT
12
13 EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 CASE NO. 2:23-CR-00161-DAD

16 Plaintiff,

17 STIPULATION AND JOINT REQUEST FOR
18 PROTECTIVE ORDER; PROTECTIVE ORDER

19 v.

20 ROBERT GODINEZ,

21 Defendant.

22
23 I. **STIPULATION**

24 1. Plaintiff United States of America, by and through its counsel of record, and Defendant
25 ROBERT GODINEZ, by and through his counsel of record (collectively, the “parties”), for the reasons
26 set forth below, request that the Court enter the proposed protective order (the “Protective Order”)
27 governing the use and dissemination of (1) personal identifying information (“PII”) of real persons
pursuant to Federal Rule of Criminal Procedure Rule 16(d) (1), and (3) information related to
confidential informant(s) and/ or cooperating witness(es) who may testify at trial.

28 Introduction and Grounds for Protective Order

29 2. Defendant is charged in this matter with violations of 21 U.S.C. § 841(a)(1) – Possession
30 with Intent to Distribute Methamphetamine; 21 U.S.C. § 841(a)(1) – Possession with Intent to Distribute
31 Heroin; and 21 U.S.C. § 843(b) - Use of a Communication Facility to Facilitate a Drug Trafficking
32 Offense.

1 3. As part of its investigation in the above-captioned case, the United States is in possession
2 of documents relating to the charges against the defendant, and seeks to provide those documents to
3 counsel for the defendant. Some of the materials may exceed the scope of the United States's discovery
4 obligations, but will be produced to promote a prompt and just resolution or trial of the case.

5 4. A protective order is necessary because the government intends to produce to the defense
6 materials regarding confidential informants or cooperating witnesses who participated in the
7 government's investigation and who may testify at trial. Because these materials could be used to
8 identify the confidential informants or cooperating witnesses, the government believes that the
9 unauthorized dissemination or distribution of the materials may compromise the ability of such persons
10 to participate effectively in future investigations in an undercover capacity and may expose them to
11 potential safety risks.

12 5. A protective order is also necessary because the government intends to produce to the
13 defense materials containing third parties' PII. The government believes that disclosure of this
14 information without limitation risks the privacy and security of the information's legitimate owners.
15 Because the government has an ongoing obligation to protect third parties' PII, the government cannot
16 produce to defendant an unredacted set of discovery containing this information without the Court
17 entering the Protective Order. Moreover, PII makes up a significant part of the discovery in this case
18 and such information itself, in certain instances, has evidentiary value. If the government were to
19 attempt to redact all this information in strict compliance with Federal Rule of Criminal Procedure 49.1,
20 the Eastern District of California's Local Rules regarding redaction, and the Privacy Policy of the United
21 States Judicial Conference, the defense would receive a set of discovery that would be highly confusing
22 and difficult to understand, and it would be challenging for defense counsel to adequately evaluate the
23 case, provide advice to defendant, or prepare for trial.

24 6. The purpose of the Protective Order is to (a) allow the government to comply with its
25 discovery obligations while protecting this sensitive information from unauthorized dissemination, and
26 (b) provide the defense with sufficient information to adequately represent the defendant.

27 7. Accordingly, the parties jointly request a Protective Order that will permit the United
28 States to produce discovery that is unredacted, but preserves the privacy and security of victims, witness,

1 and third parties. The parties agree that the following conditions, if ordered by the Court in the proposed
2 Protective Order, will serve the government's interest in maintaining the privacy and security of victims
3 and third parties, while permitting the Defense Team to understand the United States's evidence against
4 the defendant.

5 8. This Court may enter protective orders pursuant to Rule 16(d) of the Federal Rules of
6 Criminal Procedure, Local Rule 141.1, and its general supervisory authority.

7 **II. PROPOSED PROTECTIVE ORDER**

8 **Definitions**

9 1. The parties agree to the following definitions:

10 a. "CI Materials" includes any information relating to a confidential informant's or
11 cooperating witness's prior history of cooperation with law enforcement, prior
12 criminal history, statements, or any other information that could be used to identify a
13 confidential informant or cooperating witness, such as a name, image, address, date of
14 birth, or unique personal identification number, such as a Social Security number,
15 driver's license number, account number, or telephone number.

16 b. For the purpose of this Protective Order, "PII Materials" includes any information
17 that can be used to identify a person (excluding defendant's own name, the name of
18 any co-defendant publicly named in an Indictment in the Eastern District of
19 California, and the name of any law enforcement officer participating in the
20 investigation or preparation of reports produced by the government as part of the
21 discovery materials), including a name, address, date of birth, Social Security
22 number, driver's license number, telephone number, account number, email address,
23 or personal identification number.

24 c. "Confidential Information" refers to any document or information containing CI
25 Materials or PII Materials that the government produces to the defense pursuant to
26 this Protective Order and any copies thereof.

27 d. "Defense Team" includes (1) defendant's counsel of record ("defense counsel"); (2)
28 other attorneys at defense counsel's law firm who may be consulted regarding case

1 strategy in this case; (3) defense investigators who are assisting defense counsel with
2 this case; (4) retained experts or potential experts; and (5) paralegals, legal assistants,
3 and other support staff to defense counsel who are providing assistance on this case.

4 The Defense Team does not include defendant, defendant's family members, or any
5 other associates of defendant.

6 Terms of the Protective Order

7 2. The parties jointly request the Court enter the Protective Order, which will permit the
8 government to produce Confidential Information in a manner that preserves the privacy and security of
9 third parties. The parties agree that the following conditions in the Protective Order will serve these
10 interests:

- 11 a. The government is authorized to provide defense counsel with Confidential
12 Information marked with the following legend: "CONFIDENTIAL INFORMATION
13 -- CONTENTS SUBJECT TO PROTECTIVE ORDER." The government may put
14 that legend on the digital medium (such as DVD or hard drive) or simply label a
15 digital folder on the digital medium to cover the content of that digital folder. The
16 government may also redact any PII contained in the production of Confidential
17 Information.
- 18 b. If a defendant(s) objects to a designation that material contains Confidential
19 Information, the parties shall meet and confer. If the parties cannot reach an
20 agreement regarding an objection, defendant(s) may apply to the Court to have the
21 designation removed.
- 22 c. Defendant and the Defense Team agree to use the Confidential Information solely to
23 prepare for any pretrial motions, plea negotiations, trial, and sentencing hearing in
24 this case, as well as any appellate and post-conviction proceedings related to this
25 case.
- 26 d. The Defense Team shall not permit anyone other than the Defense Team to have
27 possession of Confidential Information, including defendant, while outside the
28 presence of the Defense Team.

- 1 e. Notwithstanding the paragraph above, defendant may see and review CI Materials
2 only in the presence of defense counsel, and defense counsel shall ensure that
3 defendant is never left alone with any CI Materials. At the conclusion of any meeting
4 with defendant at which defendant is permitted to view CI Materials, defendant must
5 return any CI Materials to defense counsel, who shall take all such materials with
6 counsel. Defendant may not take any CI Materials out of the room in which
7 defendant is meeting with defense counsel. At no time, under no circumstance, will
8 any Confidential Information be left in the possession, custody, or control of
9 defendant, regardless of defendant's custody status.
- 10 f. Defendant may review PII Materials only in the presence of a member of the Defense
11 Team, who shall ensure that defendant is never left alone with any PII Materials. At
12 the conclusion of any meeting with defendant at which defendant is permitted to view
13 PII Materials, defendant must return any PII Materials to the Defense Team, and the
14 member of the Defense Team present shall take all such materials with him or her.
15 Defendant may not take any PII Materials out of the room in which defendant is
16 meeting with the Defense Team.
- 17 g. Defendant may see and review Confidential Information as permitted by this
18 Protective Order, but defendant may not copy, keep, maintain, or otherwise possess
19 any Confidential Information in this case at any time. Defendant also may not write
20 down or memorialize any data or information contained in the Confidential
21 Information.
- 22 h. The Defense Team may review Confidential Information with a witness or potential
23 witness in this case, including defendant. Defense counsel must be present whenever
24 any CI Materials are being shown to a witness or potential witness. A member of the
25 Defense Team must be present if PII Materials are being shown to a witness or
26 potential witness. Before being shown any portion of Confidential Information,
27 however, any witness or potential witness must be informed of, and agree in writing
28 to be bound by, the requirements of the Protective Order. No member of the Defense

1 Team shall permit a witness or potential witness to retain Confidential Information or
2 any notes generated from Confidential Information.

3 i. The Defense Team shall maintain Confidential Information safely and securely, and
4 shall exercise reasonable care in ensuring the confidentiality of those materials by (1)
5 not permitting anyone other than members of the Defense Team, defendant,
6 witnesses, and potential witnesses, as restricted above, to see Confidential
7 Information; (2) not divulging to anyone other than members of the Defense Team,
8 defendant, witnesses, and potential witnesses, the contents of Confidential
9 Information; and (3) not permitting Confidential Information to be outside the
10 Defense Team's offices, homes, vehicles, or personal presence. CI Materials shall
11 not be left unattended in any vehicle.

12 j. To the extent that defendant, the Defense Team, witnesses, or potential witnesses
13 create notes that contain, in whole or in part, Confidential Information, or to the
14 extent that copies are made for authorized use by members of the Defense Team, such
15 notes, copies, or reproductions become Confidential Information subject to the
16 Protective Order and must be handled in accordance with the terms of the Protective
17 Order.

18 k. The Defense Team shall use Confidential Information only for the litigation of this
19 matter and for no other purpose. Litigation of this matter includes any appeal filed by
20 defendant and any motion filed by defendant pursuant to 28 U.S.C. § 2255. In the
21 event that a party needs to file Confidential Information with the Court or divulge the
22 contents of Confidential Information in court filings, the filing should be made under
23 seal. If the Court rejects the request to file such information under seal, the party
24 seeking to file such information publicly shall provide advance written notice to the
25 other party to afford such party an opportunity to object or otherwise respond to such
26 intention. If the other party does not object to the proposed filing, the party seeking
27 to file such information shall redact any: CI Materials or PII Materials and make all
28 reasonable attempts to limit the divulging of CI Materials or PII Materials.

1. The parties agree that any Confidential Information inadvertently produced in the course of discovery prior to entry of the Protective Order shall be subject to the terms of the Protective Order. If Confidential Information was inadvertently produced prior to entry of the Protective Order without being marked “CONFIDENTIAL INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE ORDER,” the government shall reproduce the material with the correct designation and notify defense counsel of the error. The Defense Team shall take immediate steps to destroy the unmarked material, including any copies.
- m. The parties agree that if any Confidential Information contains both CI Materials and another category of Confidential Information, the information shall be handled in accordance with the CI Materials provisions of the Protective Order.
- n. Confidential Information shall not be used by the defendant or Defense Team, in any way, in any other matter, absent an order by this Court. All materials designated subject to the Protective Order maintained in the Defense Team’s files shall remain subject to the Protective Order unless and until such order is modified by this Court. Within 30 days of the conclusion of appellate and post-conviction proceedings, defense counsel shall return CI Materials to the government or certify that such materials have been destroyed. Within 30 days of the conclusion of appellate and post-conviction proceedings, defense counsel shall return all PII Materials, certify that such materials have been destroyed, or certify that such materials are being kept pursuant to the California Business and Professions Code and the California Rules of Professional Conduct.
- o. In the event that there is a substitution of counsel prior to when such documents must be returned, new defense counsel must be informed of, and agree in writing to be bound by, the requirements of the Protective Order before the undersigned defense counsel transfers any Confidential Information to the new defense counsel. New defense counsel’s written agreement to be bound by the terms of the Protective Order must be returned to the Assistant U.S. Attorney assigned to the case. New defense

counsel then will become the Defense Team's custodian of materials designated subject to the Protective Order and shall then become responsible, upon the conclusion of appellate and post-conviction proceedings, for: (1) returning to the government, certifying the destruction of, or retaining pursuant to the California Business and Professions Code and the California Rules of Professional Conduct all PII Materials; and (2) returning to the government or certifying the destruction of all CI Materials.

p. Defense counsel agrees to advise his defendant and all members of the Defense Team of their obligations under the Protective Order and ensure their agreement to follow the Protective Order, prior to providing defendant(s) and members of the Defense Team with access to any materials subject to the Protective Order.

IT IS SO STIPULATED.

Dated: April 9, 2024

PHILLIP A. TALBERT
United States Attorney

Dated: April 9, 2024

By: /s/ ADRIAN T. KINSELLA
ADRIAN T. KINSELLA
Assistant United States Attorney

/s/ JESSE J. GARCIA
JESSE J. GARCIA
Counsel for Defendant
Robert Godinez

ORDER

The Court, having read and considered the Stipulation and Joint Request for a Protective Order, which is incorporated by reference into this Order in full, hereby finds that GOOD CAUSE exists pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure to enter the above Order.

IT IS SO FOUND AND ORDERED

Dated: April 9, 2024



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE